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DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-850]

Silicon Metal from Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that silicon metal from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2016, through December 31, 2016.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Robert James or Jesus Saenz, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0649 or (202) 482-8184, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on April 4, 2017.¹ On August 1, 2017, the Department postponed the preliminary

¹ See *Silicon Metal from Australia, Brazil, and Norway*, 82 FR 16352 (April 4, 2017) (*Initiation Notice*).

determination of this investigation and the revised deadline is now October 4, 2017.² For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is silicon metal from Brazil. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. After evaluating these comments, the Department preliminarily determines that modifying the scope language as it appeared in the *Initiation Notice* is not warranted. *See*

² *See Silicon Metal from Australia, Brazil, and Norway: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 35753 (August 1, 2017).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Silicon Metal from Brazil" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁵ *See Initiation Notice*.

the scope in Appendix I to this notice. However, the Department is inviting comment on one of the issues raised: the appropriate calculation methodology for determining the silicon content of out-of-scope products (*i.e.*, silicon metal with a silicon content in excess of 99.99 percent), and, specifically, which impurities should be taken into account in that calculation. These comments are due no later than November 6, 2017, and rebuttal comments no later than November 13, 2017. For a summary of the product coverage comments submitted on the record of this proceeding, *see* the Preliminary Decision Memorandum.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. The Department has preliminarily relied on the facts otherwise available, in accordance with section 776(a)(1) of the Act, to determine an estimated weighted-average dumping margin for Palmyra do Brasil Indústria e Comércio de Silício Metálico e Recursos Naturais Ltda. (Palmyra do Brasil) (formerly known as Dow Corning Silício do Brasil Indústria e Comércio Ltda. (Dow Corning Silício)).⁶ Furthermore, pursuant to section 776(a) and (b) of the Act, the Department has preliminarily relied upon adverse facts available to determine an estimated weighted-average dumping margin for Ligas de Alumínio S.A. (LIASA). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and

⁶ On August 23, 2017 Dow Corning Silício notified the Department that it had legally changed its name to Palmyra do Brasil. For further discussion of Dow Corning Silício's name change to Palmyra do Brasil, *see* the Preliminary Decision Memorandum.

producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, then the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

The Department has preliminarily determined the estimated weighted-average dumping margin for each of the individually examined respondents (*i.e.*, Palmyra do Brasil and LIASA) entirely under section 776 of the Act. Consequently, the only available rates for this preliminary determination are the dumping margins alleged in the Petition⁷ and are the dumping margins upon which we initiated this investigation. Pursuant to section 735(c)(5)(B) of the Act, the Department's practice under these circumstances is to calculate the "all-others" rate as a simple average of the dumping margins alleged in the Petition.⁸ For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

⁷ See Silicon Metal from Australia, Brazil, Kazakhstan and Norway: Antidumping and Countervailing Duty Petition," dated March 8, 2017 (the Petition).

⁸ See, e.g. *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan*, 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014); and *Steel Concrete Reinforcing Bar from Japan: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 12796, 12797 (March 7, 2017), unchanged in *Steel Concrete Reinforcing Bar from Japan: Final Affirmative*

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/Producer	Estimated Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for Export Subsidy Offset(s)) (percent)
Palmyra do Brasil Indústria e Comércio de Silício Metálico e Recursos Naturais Ltda. (formerly known as Dow Corning Silício do Brasil Indústria e Comércio Ltda.)	56.78	56.24 ⁹
Ligas de Alumínio S.A. - LIASA	134.92	134.38 ¹⁰
All-Others	56.78	56.24 ¹¹

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register* as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin, adjusted for export subsidy offset(s), as follows: (1) the cash deposit rate for the respondents listed above

Determination of Sales at Less Than Fair Value, 82 FR 23195 (May 22, 2017).

⁹ See *Silicon Metal From Brazil: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 37841 (August 14, 2017), and accompanying Preliminary Decision Memorandum at 4-9; and Memorandum to the File from Jaron Moore, International Trade Compliance Analyst, “Preliminary Margin Calculations – Silicon Metal from Brazil,” dated concurrently with this notice.

¹⁰ *Id.*

¹¹ *Id.*

will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the estimated weighted-average dumping margin for all other producers and exporters. These suspension of liquidation instructions will remain in effect until further notice.

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect.

Accordingly, as the Department preliminarily made an affirmative determination for countervailable export subsidies, the Department has offset the estimated weighted-average dumping margins by the appropriate CVD rate to determine the required cash deposit rates. The adjusted cash deposit rates may be found in the Preliminary Determination section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, the Department will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of

preliminary determination in the *Federal Register*, in accordance with 19 CFR 351.224(b).

However, the Department preliminarily determined estimated weighted-average dumping margins for both respondents that are determined entirely under section 776 of the Act. As these rates are based solely on margins from the Petition, there are no calculations to disclose.

Verification

As explained in the Preliminary Decision Memorandum, consistent with section 782(d), we will afford Palmyra do Brasil the opportunity to remedy certain deficiencies in its reported sales and further manufacturing cost data after issuing this preliminary determination. As provided in section 782(i)(1) of the Act, we intend to verify this respondent's information if we rely upon it in making our final determination. We do not intend to verify LIASA as it has been found to have been uncooperative in this investigation.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹² Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after

¹² See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 6, 2017, pursuant to 19 CFR 351.210(e), Palmyra do Brasil requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹³ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final

¹³ See Letter from Palmyra do Brasil, "Silicon Metal from Brazil / Exporter's Request for Postponement of Final Antidumping Determination" dated September 6, 2017.

determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, the Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Dated: October 4, 2017.

Appendix I

Scope of the Investigation

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Name Change for Dow Corning Silicio do Brasil Indústria e Comércio Ltda.
- IV. Period of Investigation
- V. Scope Comments
- VI. Application of Facts Available and Use of Adverse Facts Available
 - A. Application of Facts Available
 - B. Use of Adverse Inference for LIASA
 - C. Preliminary Estimated Weighted-Average Dumping Margin Based on AFA
 - D. Corroboration of Secondary Information
- VII. Conclusion

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